

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

GABRIEL RUIZ-DIAZ, *et al.*,  
Plaintiffs,  
v.  
UNITED STATES OF AMERICA,  
*et al.*,  
Defendants.

No. C07-1881RSL

## **ORDER GRANTING SECOND MOTION FOR CLASS CERTIFICATION**

This matter comes before the Court on “Plaintiffs’ Second Motion for Class Certification.” Dkt. # 52. The individual named plaintiffs seek to go forward with this litigation as representatives of a class, described as follows:

all individuals currently in the United States who are beneficiaries of a Petition for Special Immigrant (Religious Worker) (Form I-360) that has been filed or will be filed, and who were or would be eligible to file an Application for Adjustment of Status (Form I-485) but for CIS's policy codified at 8 C.F.R. § 245.2(a)(2)(i)(B) that the Form I-360 petition must be approved before the Form I-485 application can be filed.

Defendants do not contest that the proposed class is so numerous that joinder is impractical or that the plaintiffs will fairly and adequately represent the absent class members. They challenge plaintiffs' assertions regarding commonality and typicality, however, and argue that the requirements of Fed. R. Civ. P. 23(b) are not satisfied.

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1                   **Fed. R. Civ. P. 23(a)(2): Commonality**

2                   Pursuant to Fed. R. Civ. P. 23(a)(2), there must be questions of law and/or fact  
 3 common to the proposed class in order to justify certification. Defendants argue that  
 4 commonality does not exist because (i) the claims of the three organizational plaintiffs involve  
 5 issues of law and fact that are distinct from the issues raised by the individual plaintiffs and  
 6 (ii) the claims of each individual will turn on unique facts related to their eligibility for  
 7 adjustment of status. Neither argument defeats commonality.

8                   Plaintiffs seek certification of a class of individuals: the organizational plaintiffs  
 9 have no place in the class and are virtually irrelevant to the class certification analysis. Each  
 10 and every member of the proposed class would benefit from the resolution of significant legal  
 11 and factual issues, such as whether CIS' policy of rejecting I-485 applications for adjustment of  
 12 status unless and until the agency grants the I-360 immigrant visa petition filed by the  
 13 applicant's employer is lawful. Defendants correctly point out that not all of the questions  
 14 related to the class are common, but there is no requirement that every issue be the same.  
 15 Where there are substantial questions which, if tried separately, would have to be answered as to  
 16 each potential class member, this element is satisfied. See Walters v. Reno, 145 F.3d 1032,  
 17 1045-46 (9th Cir. 1998). The Court finds that there are questions of law and/or fact that are  
 18 common to all class members.<sup>1</sup>

19                   **Fed. R. Civ. P. 23(a)(3): Typicality**

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21                   <sup>1</sup> Defendants' first argument regarding commonality barely warrants mention, much less  
 22 consideration. Plaintiffs could, and apparently did, reasonably assume that commonality was not an  
 23 issue in this case because defendants had previously failed to address the issue and the Court found that  
 24 commonality was uncontested. Dkt. # 28 and 47. Parties are not required to put on evidence regarding  
 25 an uncontested element of a claim: in fact, such evidence could be excluded as irrelevant, wasteful, or  
 26 prejudicial, depending on the circumstances. Defendants' waiver argument is an attempt to use their  
 own change in litigation strategy as a sword to trap unwary litigants and to preclude the resolution of  
 this issue on the merits.

1           The proposed class is comprised of individuals currently living in the United  
2 States who are the beneficiaries of I-360 petitions filed on their behalf and who would have been  
3 eligible to file an I-485 application but for CIS' policy against concurrent filing. The newly-  
4 added named plaintiffs, Yuriy Kasyanov, Lelia Tenreyro-Viana, Edgardo Gaston Romero  
5 Lacuesta, Rosario Razo Romero, Youn Su Nam, and Harold Michael Carl Lapian, fall within  
6 this class definition. Defendants acknowledge that all seven of these individuals "are ineligible  
7 to file an I-485 because their I-360 petitions are still pending." Opposition at 8. Their claims  
8 arise from the same circumstances and the same governmental policy as those of the absent class  
9 members. Defendants have made no effort to show that these seven plaintiffs have a conflict  
10 with the proposed class or that their claims are somehow atypical. See, e.g., Hanon v.  
11 Dataproducts Corp., 976 F.2d 497, 508 (9th Cir. 1992)). The Court therefore finds that the  
12 claims of Kasyanov, Tenreyro-Viana, Romero Lacuesta, Razo Romero, Nam, and Lapian are  
13 typical of the claims of the proposed class.

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15           **Fed. R. Civ. P. 23(b)(2)**

16           Having determined that plaintiffs' proposed class satisfies the four elements of  
17 Fed. R. Civ. P. 23(a), the Court must determine whether certification is appropriate under Fed.  
18 R. Civ. P. 23(b). Plaintiffs assert that certification is proper under Rule 23(b)(2) because "the  
19 party opposing the class has acted or refused to act on grounds that apply generally to the class,  
20 so that final injunctive relief or corresponding declaratory relief is appropriate respecting the  
21 class as a whole . . ." Defendants argue that the participation of the organizational plaintiffs in  
22 this litigation somehow precludes a finding that injunctive or declaratory relief would be  
23 generally applicable to the class as a whole. As discussed above, however, the organizational  
24 plaintiffs are not members of the proposed class: their claim for separate forms of relief does  
25 not alter the fact that each and every class member would benefit from injunctive or declaratory

1 relief directed at the government's policy against concurrent filing. Certification under Fed. R.  
2 Civ. P. 23(b)(2) is, therefore, appropriate.

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4 **Class Definition**

5 Defendants propose an alternative class definition that would reduce the number  
6 of class members over whom the Court has jurisdiction to a small fraction of those encompassed  
7 by plaintiffs' definition. Only those individuals with pending I-360 petitions who have already  
8 accrued 180 days of unlawful presence time but are still "lawfully residing" in the United States  
9 would fall within defendants' definition. If presented as a Venn diagram, the area of overlap  
10 between the circles would represent the few individuals who remain, unemployed, in the United  
11 States after their 180-day grace period expires. There is no reason to restrict the class to only  
12 those who have suffered the maximum possible harm from defendants' policy. Plaintiffs have  
13 asserted claims based on unequal treatment: all those adversely affected by the non-concurrent  
14 filing policy (*i.e.*, all those treated differently because they are religiously affiliated) should have  
15 their claims adjudicated through this class action.

16

17 For all of the foregoing reasons, plaintiff's second motion for class certification is  
18 GRANTED. Plaintiffs Kasyanov, Tenreyro-Viana, Romero Lacuesta, Razo Romero, Nam, and  
19 Lopian are designated as class representatives.

20 DATED this 30<sup>th</sup> day of June, 2008.  
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24 Robert S. Lasnik  
25 United States District Judge  
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